Office-Supreme Court, U.S.
FILED
DEC 21 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-219

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

GARY MCDONALD
Petitioner,

v.

CITY OF WEST BRANCH, MICHIGAN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE RESPONDENTS

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
THOMAS R. BAGBY *
MCGUINESS & WILLIAMS
1015 Fifteenth St., N.W.
Washington, D.C. 20005
(202) 789-8600
Attorneys for the Equal Employment Advisory Council

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	6
ARGUMENT	
I. A PRIOR ARBITRATION AWARD RENDERED AFTER A FULL AND FAIR HEARING PRECLUDES RELITIGATION UNDER SECTION 1983 OF CLAIMS OR ISSUES ARISING OUT OF THE SAME TRANSACTION	9
II. PERSUASIVE POLICY REASONS SUPPORT GIVING PRECLUSIVE EFFECT TO FINAL ARBITRATION AWARDS	17
CONCLUSION	21

TABLE OF AUTHORITIES

Cases	Page
Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974)	7, 14, 15
Allen v. McCurry, 449 U.S. 90 (1980)	6, 9, 10
Barrentine v. Arkansas—Best Freight System, 450 U.S. 728 (1981)	7, 14, 15
Becton v. Detroit Terminal of Consol. Freightways, 687 F.2d 140 (6th Cir. 1982), *cert. denied*, 103 S.Ct. 1432 (1983)	17
Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971)	10
City of Grand Rapids v. Grand Rapids Lodge, 415 Mich. 628, 330 N.W.2d 52 (1982)	19
Cromwell v. County of Sac, 94 U.S. 351 (1877)	9, 10
Ford Motor Co. v. EEOC, 102 S.Ct. 3057 (1982)	2
Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368 (1974)	19
Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976)	19
Inland Empire District Council v. Millis, 325 U.S. 697 (1945)	16
Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982)	2, 9, 10, 12, 16
Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974)	16
Montana v. United States, 440 U.S. 147 (1979)	10
Nash County Bd. of Ed. v. Biltmore Co., 640 F.2d 484 (4th Cir.), *cert. denied*, 454 U.S. 878 (1981)	12
Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965)	19
Sherrer v. Sherrer, 334 U.S. 343 (1948)	12
Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981)	2
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957)	19
Underwriters Assur. Co. v. North Carolina Life, 455 U.S. 691 (1982)	12
United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960)	18
United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)	18, 19

TABLE OF AUTHORITIES—Continued

Page

United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 18, 19
Vaca v. Sipes, 386 U.S. 171 (1967) 17
W.R. Grace and Company v. Local Union No. 759, 103 S.Ct. 2177 (1983) 2

Statutes

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* 14
42 U.S.C. § 2000e-2(c) 14
29 U.S.C. § 108 19
29 U.S.C. § 171(b) 19
29 U.S.C. § 173(d) 19
42 U.S.C. § 1983 ..... *passim*

Other Authorities

Address of Justice O'Connor to Joint Meeting of the Fellows of the American Bar Association and the National Conference of Bar Presidents, New Orleans, Louisiana, February 6, 1983 20
Annual Report of the Director, Administrative Office of U.S. Courts (1981) 20
Restatement (Second) of Judgments (1982) .....
§ 31 10
§ 84 ..... 7, 10, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-219

GARY MCDONALD

Petitioner,

v.

CITY OF WEST BRANCH, MICHIGAN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF THE RESPONDENTS

This brief amicus curiae of the Equal Employment Advisory Council ("EEAC") is submitted with the consent of the parties [1] in support of the respondents.

INTEREST OF THE AMICUS CURIAE

EEAC is a voluntary nonprofit association organized to promote the common interest of employers and

---

[1] Their consents have been filed with the Clerk of the Court.

the general public in sound government policies, procedures and requirements pertaining to nondiscriminatory employment practices. Its membership consists of a broad segment of the employer community in the United States, including both individual employers and trade and industry associations. Its governing body is a Board of Directors composed primarily of experts and specialists in the field of equal employment opportunity (EEO) whose combined experience gives the Council a unique depth of understanding of the practical and legal considerations relevant to the proper interpretation and application of EEO policies and requirements.

Substantially all of EEAC's members, or their constituents, are employers subject to various civil rights and equal employment laws, regulations, and orders. Many EEAC members are signatories to collective bargaining agreements which contain various types of grievance procedures. As such, EEAC has a direct interest in the issue presented for the Court's consideration in the instant case—whether unappealed arbitration awards should be given preclusive effect in cases brought under 42 U.S.C. § 1983.

Because of its interest in the orderly administration of the nation's civil rights laws as well as the relationship of such laws to collective bargaining obligations, EEAC has filed briefs as amicus curiae with this Court in *W.R. Grace and Company v. Local Union No. 759*, 103 S.Ct. 2177 (1983); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982); *Ford Motor Co. v. EEOC*, 102 S.Ct. 3057 (1982); and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981), among others.

STATEMENT OF THE CASE

Petitioner Gary McDonald was discharged from his position as a West Branch, Michigan, police officer effective on November 25, 1976 (Joint Appendix 24) (hereinafter "J.A."). Among the reasons given McDonald for his discharge was: "[c]onduct unbecoming an officer" (J.A. 24). After his discharge, McDonald filed a grievance pursuant to the collective bargaining agreement then in effect between the City and the Union in which he alleged that his discharge was not for "proper cause," as required by the agreement (J.A. 26).[2] By letter dated December 23, 1976, McDonald was notified of the specific incidents of misconduct which led to his discharge, including "[m]aking a sexual assault upon a minor female (J.A. 27).

After the preliminary steps in the grievance process had been exhausted, the grievance was taken to arbitration at the request of McDonald and the City. The arbitration hearing was held on June 9, 1977 before George E. Bowles, an arbitrator for the American Arbitration Association. The issue submitted to the arbitrator was: "Was the discharge of Officer Gary McDonald for just cause?" (J.A. 32, 44). At the arbitration hearing, McDonald was represented by counsel, who had issued subpoenas and who conducted extensive direct and cross-examination of the witnesses. Although the collective bargaining agreement prohibited discrimination "because of their membership in, or their activity in behalf of, the Union" (J.A. 46), McDonald never contended during the ar-

[2] Article III of the collective bargaining agreement provides in relevant part that the City could "discharge employees for proper cause" (J.A. 47).

bitration hearing that he was discharged for his union activities. Post-hearing briefs were filed with the Arbitrator by counsel for McDonald and the City.

In an opinion dated October 31, 1977 (J.A. 30-43), Arbitrator Bowles upheld the discharge. The arbitrator found that the discharge was for "proper cause" based on the "Dack" incident in that McDonald had made "a sexual assault on a minor female" (J.A. 32-38, 42-43.) The arbitrator found:

> [That] Officer McDonald, because of the Dack incident, has lost his effectiveness as a police officer in the community. The misconduct is of such a nature and so seriously destructive of the sensitive police role that it is found that no remedial action of the Arbitrator can be expected to restore Officer McDonald to a position of confidence and acceptance in the community in a police role (J.A. 43).

McDonald did not appeal or otherwise seek to have the arbitration award overturned.

On November 21, 1979, McDonald filed the instant action pursuant to 42 U.S.C. § 1983 (J.A. 3).[3] In particular, he alleged that his discharge was because of his union activities, which he maintained were protected by the First Amendment's right to freedom of

---

[3] 42 U.S.C. § 1983 provides in relevant part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

association (J.A. 5). In its answer, the City alleged as affirmative defenses that McDonald had waived his civil action by resort to arbitration and that the suit was barred because his claim had been adjudicated in the arbitration proceeding (J.A. 22).

A jury trial was held on March 9-14, 1981, before the Honorable James Harvey, United States District Judge for the Eastern District of Michigan, Northern Division (J.A. 1-2). At the conclusion of the plaintiff's case, the defendants moved for a directed verdict based on the preclusive effect of the prior arbitration decision. The district court denied the motion. (Appendix to the Petition for Writ of Certiorari at A8-A11) (hereinafter "Pet. App."). The jury found, on special interrogatories, that Chief of Police Longstreet had discharged the plaintiff because of his union activities,[4] and awarded McDonald four thousand ($4,000.00) dollars in compensatory and four thousand ($4,000.00) dollars in punitive damages (J.A. 2). The jury found in favor of all other defendants (J.A. 2). Defendant Longstreet's motion for judgment notwithstanding the verdict was denied on May 28, 1981 (Pet. App. A12-A13).

In an opinion filed on April 16, 1983, the Court of Appeals for the Sixth Circuit reversed the judgment

---

[4] The special interrogatory on which the jury found for McDonald read in its entirety as follows:

Plaintiff's First Amendment Claim

1. **Do you find that defendant Paul Longstreet discharged the plaintiff from his position as a police officer in retaliation for, or to suppress, his union activity, and therefore in violation of his First Amendment rights to freedom of speech or association?**

yes ☒ no ☐

(Pet. App. A15).

of the district court (Pet. App. A1-A5). In doing so, the court of appeals stated that:

> It is clear from the arbitrator's award that he found that the *reason* for the plaintiff's dismissal was the Dack incident. Plaintiff's first amendment argument seeks to relitigate this issue and hence to vacate the arbitrator's award. The parties have agreed to settle this dispute through the private means of arbitration. Since we find no abuse of that process, we conclude that its result should not be disturbed (Pet. App. A3) (emphasis added).

SUMMARY OF ARGUMENT

The court of appeals properly refused to allow relitigation of the petitioner's discharge claim. Nothing in Section 1983 prevents a court from affording preclusive effect to a claim which actually was decided in an arbitration proceeding, or which could have been determined in such proceeding had it been raised. Likewise, nothing in Section 1983 prevents a court from denying a party the opportunity to relitigate issues that actually were decided in an arbitration proceeding. In this instance, the petitioner had a full and fair opportunity to have his grievance heard and the reasons for his termination decided. Accordingly, petitioner's subsequent lawsuit under Section 1983 properly was barred based on recognized principles of res judicata and collateral estoppel. Sound policy reasons exist for refusing to allow the subsequent relitigation of a claim previously submitted to binding arbitration.

Section 1983 neither repealed nor restricted the traditional doctrines of res judicata and collateral estoppel. *Allen v. McCurry*, 449 U.S. 90 (1980).

Thus, the same principles of res judicata and collateral estoppel should be applied to an arbitration award as would be applied to a state court judgment. Restatement (Second) of Judgments § 84 (1982). Since the petitioner could have raised in the arbitration proceeding his claim that his termination was because of his union activities, he is precluded from relitigating that issue in the guise of a constitutional claim. Likewise, under established principles of collateral estoppel, the petitioner should be estopped from relitigating the issue of whether his discharge was for proper cause.

Neither this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), nor in *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981), justifies denying preclusive effect to the final arbitration award herein. Those decisions deal with specific statutory schemes that vest individual employees with "nonwaivable public law right[s] . . . that [are] separate and distinct from the rights created through the 'majoritarian processes' of collective bargaining," *Barrentine*, 450 U.S. at 737-38, and with respect to which the interests of the majority, as perceived by their union, might well be at odds with those of the individual. *Gardner-Denver*, 415 U.S. at 58, n.19; *Barrentine*, 450 U.S. at 742. In contrast, the plaintiff here bases his Section 1983 claim on an asserted violation of his right to engage in union activities—a right that is inextricably bound with the collective bargaining process and with respect to which the union's interests are presumptively in harmony with the plaintiff's. Accordingly, there is no need to extend the principles of *Gardner-Denver* and *Barrentine* to this situation in order to assure adequate protection of the plaintiff's

individual rights. Indeed, to deny preclusive effect to an arbitral finding of just cause for discharge in these circumstances would diminish the role of binding arbitration so that practically any discharged public sector employee who lost in arbitration could relitigate his discharge under Section 1983. There is nothing in the legislative history of Section 1983 that supports such an expansive reading of that statute.

The strong federal policy favoring the promotion of stability in employment relations supports according finality to arbitration awards. Courts have deferred to collectively-bargained resolution processes where the dispute arises out of the collective bargaining agreement. The reasons favoring according finality to arbitration awards include the efficient use of judicial resources, the limiting of costly and time consuming litigation, and the preservation of the integrity of the arbitration process. In instances such as this, where the grievant has had a full and fair opportunity to present his claim in the arbitration hearing, a policy of granting a preclusive effect to an arbitration award helps to preserve scarce judicial resources without sacrificing the rights of individuals.

ARGUMENT

I. A PRIOR ARBITRATION AWARD RENDERED AFTER A FULL AND FAIR HEARING PRECLUDES RELITIGATION UNDER SECTION 1983 OF CLAIMS OR ISSUES ARISING OUT OF THE SAME TRANSACTION

In *Allen v. McCurry*, 449 U.S. 90, 97-98 (1980), this Court rejected the argument that Section 1983 repealed or restricted the traditional doctrine of preclusion. In so doing, the Court rejected the notion "that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court, regardless of the legal posture in which the federal claim arises." *Id.* at 103. Although *Allen* involved a state court decision, there is no persuasive reason why a similar preclusive effect should not be given to an arbitration award, particularly where the petitioner was afforded a full and fair opportunity to present his claim in the arbitration hearing.

This Court repeatedly has recognized the importance and continuing vitality of the related doctrines of res judicata and collateral estoppel. In *Allen*, *supra*, 449 U.S. at 94, this Court stated that "[u]nder res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *See also Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 466, n.6 (1982); *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1877). Likewise, this Court has stated that "[u]nder collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case."

Allen, supra, 449 U.S. at 94. *See also Kremer, supra*, 456 U.S. at 466, n.6; *Montana v. United States*, 440 U.S. 147, 153 (1979); *Cromwell v. County of Sac supra*, 94 U.S. at 352.[5] Thus, "res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudication." *Allen, supra*, 449 U.S. at 94.[6]

The Restatement (Second) of Judgments § 84 (1982) provides that a "valid and final award by arbitration has the same effects under the rules of res judicata . . . as a judgment of a court."[7] Thus, the

---

[5] The Restatement of Judgments now uses "claim preclusion" and "issue preclusion" in place of res judicata and collateral estoppel, respectively. Restatement (Second) of Judgments § 31 (1982).

[6] One general exception to the principles of res judicata and collateral estoppel is that the party against whom an earlier decision is asserted must have had a "full and fair opportunity" to litigate the issue in the earlier proceeding. *See Kremer, supra*, 456 U.S. at 481, n.22; *Montana, supra* at 153; *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-29 (1971). As set forth below, petitioner in this case had a "full and fair opportunity" to raise both the claim of whether his discharge was for his union activities and whether there was proper cause for his discharge.

[7] Section 84 of the Restatement (Second) of Judgments provides in its entirety as follows:

> (1) Except as stated in Subsections (2), (3), and (4), a valid and final award by arbitration has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court.
>
> (2) An award by arbitration with respect to a claim does not preclude relitigation of the same or a related claim

same principles of res judicata and collateral estoppel should be applied herein as would be applied to a state court judgment, absent special circumstances that would make such an application inappropriate.[8]

The court of appeals herein concluded that, based on the arbitrator's award, "the district court should have applied res judicata and collateral estoppel principles to dismiss the section 1983 action" (Pet. App. A3). As set forth below, whether this case is viewed as controlled by principles of claim preclusion or issue preclusion, the court of appeals was correct in refusing to allow relitigation of petitioner's previously determined discharge claim.

---

based on the same transaction if a scheme of remedies permits assertion of the second claim notwithstanding the award regarding the first claim.

(3) A determination of an issue in arbitration does not preclude relitigation of that issue if:

(a) According preclusive effect to determination of the issue would be incompatible with a legal policy or contractual provision that the tribunal in which the issue subsequently arises be free to make an independent determination of the issue in question, or with a purpose of the arbitration agreement that the arbitration be specially expeditious; or

(b) The procedure leading to the award lacked the elements of adjudicatory procedure prescribed in § 83(2).

(4) If the terms of an agreement to arbitrate limit the binding effect of the award in another adjudication or arbitration proceeding, the extent to which the award has conclusive effect is determined in accordance with that limitation.

[8] As set forth below, none of the exceptions in § 84 apply to this case.

The essence of petitioner's grievance was that he was discharged without proper cause, as required by the collective bargaining agreement.[9] Since the collective bargaining agreement prohibits discrimination "because of their membership in, or their activity in behalf of, the Union" (J.A. 46), it is clear that the petitioner could have raised in the arbitration proceeding the issue of whether his termination was because of his union activities. It also is clear from prior decisions of this Court that "[a] party cannot escape the requirements of . . . res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding." *Underwriters Assur. Co. v. North Carolina Life*, 455 U.S. 691, 710 (1982); *Kremer, supra*, 456 U.S. at 465, n.4; *Sherrer v. Sherrer*, 334 U.S. 343, 352 (1948). Since the petitioner could have alleged a claim in the arbitration proceeding based on the nondiscrimination clause in the collective bargaining agreement, he should be precluded from raising that issue subsequently in the guise of a constitutional claim.

This Court has recognized that "[r]es judicata has recently been taken to bar claims arising from the same transaction even if brought under different statutes." *Kremer, supra*, 456 U.S. at 481, n.22, *citing Nash County Bd. of Ed. v. Biltmore Co.*, 640 F.2d 484, 488 (4th Cir.), *cert. denied*, 454 U.S. 878 (1981). Thus, petitioner properly may be precluded from relitigating the instant claim. In any event, it

---

[9] Petitioner's grievance stated:

> We state that the Discharge has no proper cause, and further feel that there is no legitimate reason for this type of action, or any other type of action against officer Gary McDonald (J.A. 26).

is clear that the petitioner is estopped from relitigating the *issue* of whether there was proper cause for his discharge.

In the instant case, the issue that was presented for the arbitrator's decision was: "Was the discharge of Officer Gary McDonald for just cause?" (J.A. 32, 44). The arbitrator found, based on the "Dack" incident of sexual assault on a minor, that there was just cause for the petitioner's discharge (J.A. 32-38, 42-43). In its opinion reversing the district court decision in this case, the court of appeals stated that "*the reason* for the plaintiff's dismissal was the Dack incident" (Pet. App. A3). Likewise, in his concurring opinion, Judge Merritt stated that "[i]t is clear from the arbitrator's award that he found that the reason for the plaintiff's dismissal was the Dack incident involving sexual misconduct and not any speech or union activities by the plaintiff" (Pet. App. A5). Thus, it is clear that both the arbitrator and the court of appeals viewed the issue that was determined in the arbitration hearing to be whether there was just (or proper) cause for the plaintiff's discharge. Since that issue was in fact determined in the arbitration, the court of appeals was correct in estopping the petitioner from relitigating the reasons for his discharge. Since the applicable collective bargaining agreement provides that "[t]he decision of the arbitrator shall be final and binding on the parties" (J.A. 49), the petitioner should not be allowed to relitigate the reasons for his discharge, especially where there are no overriding policy reasons supporting such relitigation and where the previous proceeding complied with the basic requirements of due process and fairness.

The petitioner relies on *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), and *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981), in support of its contention that an adverse arbitration award should not be given preclusive effect in a subsequent suit based on Section 1983. Neither *Gardner-Denver* nor *Barrentine*, however, mandates a denial of preclusive effect to an arbitration award in subsequent Section 1983 actions. Both of those cases were concerned with statutes that contained extensive administrative and judicial schemes in particular and discrete areas—employment discrimination under Title VII in *Gardner-Denver* and overtime claims under the Fair Labor Standards Act (FLSA) in *Barrentine*.

A major concern of the Court in *Gardner-Denver* was that a "harmony of interest between the union and the individual employee cannot always be presumed, especially where a claim of racial discrimination is made." 415 U.S. at 58, n.19. In fact, the long history of union discrimination led Congress to forbid discrimination by unions as well as employers. *See* 42 U.S.C. § 2000e-2(c). Similar concern about the potential divergence of interest between the union and the individual was expressed in *Barrentine*, where the Court noted that "a union balancing individual and collective interests might validly permit some employees' statutorily granted wage and hour benefits to be sacrificed if an alternative expenditure of resources would result in increased benefits for workers in the bargaining unit as a whole." 450 U.S. at 742. There is no reason to believe in this case, however, that the interest of the union was in any way inimical to that of the petitioner. On the contrary, the petitioner's Section 1983 claim herein was

based on an asserted violation of his right to engage in union activity—a right that is part and parcel of the "majoritarian processes" of collective bargaining, 450 U.S. at 737-38, and which the union can be presumed steadfastly to support.[11] For this Court to extend the rule of *Gardner-Denver* and *Barrentine* so as to deny preclusive effect to a binding arbitration award in these circumstances would transform virtually every discharge of a public sector employee into a potential Section 1983 action.[12]

The petitioner contends that a denial of preclusive effect to an arbitration award is supported by the legislative history of Section 1983. This argument is

---

[11] An additional concern underlying this Court's decisions in *Gardner-Denver* and *Barrentine* was that issues of racial discrimination under Title VII and wage entitlements under the FLSA might lie beyond the "specialized competence of arbitrators," some of whom are not lawyers. 450 U.S. at 743 and n.21; 415 U.S. at 57, n.18. The question presented by the petitioner's Section 1983 claim in this case, however—whether the discharge was for just cause or for union activity—was the type of issue which an experienced labor arbitrator can be presumed to be at least as well qualified as a court, and probably far better qualified than most juries, to decide.

[12] Even if petitioner had not raised his claim based on his union activities, it is likely that he would have pursued his Section 1983 claim based on an alleged violation of his due process rights in the grievance process. Unless preclusive effect is given to final arbitration awards, every such discharge of a public employee presents the opportunity for a claim under Section 1983 based on some alleged constitutional violation. Of course, as noted above, where a grievant is able to set forth substantial evidence that he was not afforded a full and fair opportunity to have his claim heard in the earlier proceeding, a court may elect not to apply the principles of res judicata and collateral estoppel.

advanced despite petitioner's admission that "the legislative history does not directly deal with arbitration" (Petitioner's Brief at 21) (hereinafter "Pet. Br."). As is clear from the legislative history cited by the petitioner (Pet. Br. 18-21), the primary concern of Congress was ensuring a full and fair opportunity to present claims to an impartial decision-maker. Where a full and fair opportunity to present a claim has been afforded a person, such as in the instant arbitration, there is nothing in the legislative history of Section 1983 which would prevent giving such an award a preclusive effect in a subsequent civil action.

Petitioner also contends that he was not given a full and fair opportunity to present his claim (Pet. Br. 37). As this Court has noted, however, no single model of procedural fairness is dictated by the Due Process Clause of the Constitution. *Kremer, supra,* 456 U.S. at 483; *Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 610 (1974); *Inland Empire District Council v. Mills*, 325 U.S. 697, 710 (1945). In the instant case, the petitioner was represented by counsel who had issued subpoenas and who conducted extensive direct and cross-examination.[13] Petitioner's counsel filed a post-hearing brief and the arbitrator issued an opinion which set forth in detail the reasons for his decision. Under these circumstances, it is clear that the petitioner was afforded a full and fair opportunity to contest the reasons for his discharge. The fact that the petitioner never raised a claim based on his union activities during the entire course of the grievance process indicates that this claim may have

[13] In fact, the arbitrator's opinion makes reference to the "vigorous cross-examination by Union counsel" (J.A. 35).

been merely an afterthought used as a means of converting a simple discharge into a constitutional claim under Section 1983.[14] Under these circumstances, there is no persuasive reason for not giving preclusive effect to the arbitration award herein.[15]

II. PERSUASIVE POLICY REASONS SUPPORT GIVING PRECLUSIVE EFFECT TO FINAL ARBITRATION AWARDS

This Court clearly has articulated the effect to be accorded an arbitral decision which adjudicates claims under a collective bargaining agreement. Under the

---

[14] The petitioner also maintains that union control of the arbitration process poses risks to the rights of Section 1983 claimants (Pet. Br. 26-29). In the instant case, however, it is clear that there would have been no conflict between the petitioner and the union on the union activity issue, since, as noted above, the prevention of discrimination on the basis of union activity clearly is of vital interest to the union. Moreover, in a broader sense, on the rare occasions when the union fails to protect its members' interests, a cause of action for breach of the union's duty of fair representation would ensure that employee's rights are protected. *See Vaca v. Sipes*, 386 U.S. 171 (1967). The petitioner's complaint alleged that the union breached its duty under state law to represent him adequately. The district court declined to exercise pendent jurisdiction over this claim and petitioner neither sought review of that determination nor pursued the claim in state court.

[15] The petitioner has cited the decision of another panel of the Sixth circuit in *Becton v. Detroit Terminal of Consol. Freightways*, 687 F.2d 140 (6th Cir. 1982), *cert. denied*, 103 S.Ct. 1432 (1983), in support of his argument that an arbitration award does not preclude a subsequent action under Section 1983 (Pet. Br. 14-15). As the petitioner acknowledges (Pet. Br. 14), the language in *Becton* regarding Section 1983 was dictum and is not instructive in light of the subsequent holding of the Sixth Circuit in the instant case.

Steelworkers trilogy,[16] an arbitral decision is final and binding on the employer and employee, and judicial review is limited as to both.

The policy according finality to arbitration is designed to promote stability in industiral relations through the collective bargaining agreement. *United Steelworkers v. Warrior & Gulf Navigation Co., supra*, 363 U.S. at 578. It has been recognized that arbitration can be a stabilizing influence only insofar as it serves as a vehicle for handling any and all disputes that arise under the agreement. *United Steelworkers v. American Mfg. Co., supra*, 363 U.S. at 567. As this Court explained:

> [T]he arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level—disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.

United Steelworkers v. Enterprise Wheel & Car Corp., supra, 363 U.S. at 596 (footnote omitted).

There is a strong Congressional policy favoring the use of grievance procedures and arbitration as a means of resolving labor disputes. Thus, Congress has stated in this regard that:

> [f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over

---

[16] *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

> the application or interpretation of an existing collective-bargaining agreement. 29 U.S.C. § 173 (d).

See also 29 U.S.C. §§ 108, 171(b). *United Steelworkers v. Warrior & Gulf Navigation Co., supra,* 363 U.S. at 578, and n.4; *United Steelworkers v. Enterprise Wheel & Car Corp., supra,* 363 U.S. at 596; *Textile Workers v. Lincoln Mills,* 353 U.S. 448, 458-59 (1957). Accordingly, courts have deferred to collectively—bargained disputed resolution processes where the dispute arises out of the collective bargaining agreement. *See, e.g., Hines v. Anchor Motor Freight, Inc.,* 424 U.S. 554, 562-63 (1976); *Gateway Coal Co. v. United Mine Workers of America,* 414 U.S. 368, 377-80 (1974); *Republic Steel Corp. v. Maddox,* 379 U.S. 650, 652-53 (1965). This policy favoring resolution of labor disputes through grievance or arbitration processes has become increasingly important in the public sector as well. In fact, "arbitration has come to be the favored procedure for resolving grievances in federal *and Michigan labor relations.*" *City of Grand Rapids v. Grand Rapids Lodge,* 415 Mich. 628, 330 N.W.2d 52, 54 (1982) (emphasis added).

The reasons that favor according preclusive effect to arbitration awards are substantial and include the efficient use of scarce judicial resources, the limitation of costly and time consuming litigation, the preservation of the integrity of arbitration awards and the avoidance of inconvenience and harassment of the litigants. In addiiton, the issue presented in the arbitration hearing in this case—whether there was proper cause for petitioner's discharge—is one that is peculiarly within the scope of the collective bargaining agreement and the expertise of the arbitrator.

Arbitration provides an extrajudicial means by which disputes that typically arise in an employment setting, such as whether there existed proper cause for the discharge of the petitioner, can be resolved in a more efficient and less expensive manner without further burdening our overcrowded court system. Given the increasing number of civil cases that are filed in federal district courts, it is essential that alternative methods of resolving disputes short of litigation be explored and encouraged. The crucial need for the expansion of such extrajudicial methods of dispute resolution is reflected in the dramatic increases in the numbers of civil cases and appeals that have flooded the federal courts.[17] Thus, it is clear that some means must be discovered to decrease the proliferation of civil litigation. It is submitted that providing preclusive effect to final arbitration awards would be an appropriate step toward resolving the current crisis in the federal court system. In cases such as this, where a grievant has been afforded a full and fair opportunity to present his claim in an arbitration proceeding, granting a preclusive effect to such an award will foster the preservation of scarce judicial

---

[17] For example, civil filings in all federal district courts in 1960 were 59,284; in 1981, there were 180,576 filings, an increase of 204.6%. Annual Report of the Director, Administrative Office of U.S. Courts 363 (1981). During the same period, the number of appeals docketed in the courts of appeals increased from 3,899 to 26,362, an increase of 576%. *Id.* at 346. The cases on this Court's docket in the 1980 term had grown to 5,144. *Id.* at 345. Justice O'Connor has noted that 20% of the cases decided by the Court in the 1981 term were Section 1983 cases. Address to Joint Meeting of the Fellows of the American Bar Foundation and the National Conference of Bar Presidents, New Orleans, Louisiana, February 6, 1983.

resources without sacrificing the rights of individuals which Section 1983 is designed to protect.[18]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

Respectfully submitted,

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
THOMAS R. BAGBY *
MCGUINESS & WILLIAMS
1015 Fifteenth St., N.W.
Washington, D.C. 20005
(202) 789-8600

Attorneys for the Equal Employment Advisory Council

* Counsel of Record

December 21, 1983

---

[18] Petitioner maintains that giving preclusive effect in Section 1983 actions to final arbitration awards would amount to an abrogation of the individual rights guaranteed by Section 1983 (Pet. Br. 16-18). Granting preclusive effect to a binding arbitration award, however, would not entail a waiver of an employee's Section 1983 rights, but merely would affect the forum in which those rights may be pursued. In instances where the grievant has been afforded a full and fair opportunity to present his claim, the fact that the claim is presented in an arbitration hearing should not affect the application of traditional res judicata or collateral estoppel principles.